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Letter dated 30 April 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council

On 26 March 2004, the Security Council adopted resolution 1534 (2004). In its resolution, the Security Council requested each Tribunal to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken to implement the completion strategy and what measures remain to be taken.

After consulting with the Prosecutor and in conformity with the resolution, I am pleased to submit to you a revised version of the completion strategy of the International Criminal Tribunal for Rwanda, containing the assessment requested (see annex).

(*Signed*) Erik **Møse**
President

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Annex

Completion strategy of the International Criminal Tribunal for Rwanda

Summary

This document outlines the completion strategy of the International Criminal Tribunal for Rwanda, based on the information available as of 26 April 2004. It takes into account the deadlines set in Security Council resolutions 1503 (2003) and 1534 (2004).

Trials of 21 persons are completed. Cases involving 21 accused are in progress, of which two trials are at the stage of judgement writing. Twenty-one accused are awaiting trial. Of these, trials involving six accused will commence from May to September 2004. This will bring the number of persons having their trials completed or in progress to 48. The Prosecutor intends to transfer the cases of five detainees to national jurisdictions. The trials of the remaining 10 detainees will start from 2005 onwards, depending on the Trial Chamber availability.

The Prosecutor will focus on the accused bearing the heaviest responsibility for the crimes committed in 1994. Seventeen indicted persons are still at large, of whom the Prosecutor intends to transfer four to national jurisdictions for trial. Moreover, the Prosecution is currently conducting 16 remaining investigations, which will be completed by the end of 2004. This could result in a maximum of 16 new indictments. However, the number of trials will involve less than the 29 (13 and 16) persons from these two groups. Some of them may be dead, and others may never be arrested. Therefore, the number of persons brought to Arusha will be lower.

By resolution 1512 (2003), the Security Council increased the number of *ad litem* judges that may sit at any one time from four to nine and allowed such judges to adjudicate over pre-trial matters. As a consequence of these reforms, it is estimated that the cases involving the 27 accused whose trials will be in progress by the end of 2004 (the present 21 and another 6) will be completed from 2004 to early 2006.

The last of the trials of the remaining 10 detainees (which will commence from 2005 onwards) could be conducted by 2006 or early 2007. Indictees and suspects currently at large (from the group of a maximum of 28 persons) will be tried in 2007 and 2008. On the basis of the information currently available, it is estimated that by 2008, the Tribunal may have completed trials involving between 65 and 70 persons.

I. Introduction

1. The present document contains an updated and revised version of the completion strategy of the International Criminal Tribunal for Rwanda as of 26 April 2004. It takes into account Security Council resolutions 1503 (2003) and 1534 (2004), adopted on 28 August 2003 and 26 March 2004, respectively. The document has been progressively elaborated based on contributions from the President, the Prosecutor, and the Registrar. The basis for the consultations between these three organs was originally a document entitled "Completion Strategy of the Office of the Prosecutor", containing developments as of 29 April 2003.[1] The present document is based on the Prosecutor's updated version of 28 February 2004, which is available on request.[2] Revised versions of the completion strategy will be submitted in conformity with resolution 1534 (2004).

2. It is recalled that the first accused was transferred to Arusha in May 1996. Since the first trial started in January 1997, the Tribunal has handed down 15 judgements involving 21 accused. Of these, 18 were convicted and 3 acquitted. Six of these convicts are currently serving their sentences in Mali. The total result of the second mandate (1999-2003) amounts to 9 judgements involving 14 accused. This represents a doubling of the number of accused that were tried, when compared to the first mandate (1995-1999). The total number of judgements rendered by the Tribunal thus far is set out in appendix I.

3. In addition to the 21 accused whose trials have either been completed or are at the stage of judgement writing, 21 detainees in the United Nations Detention Facilities in Arusha are engaged in trials. Four of these trials are very voluminous: the Butare Case (six accused), the Military I Case (four accused), the Government Case (four accused), and Karemera et al. (four accused). The two last-mentioned trials commenced in November 2003 and are at a relatively early stage. Two single-accused trials (Gacumbitsi and Ndindabahizi) commenced in July and September 2003. Judgements in these two cases are expected in the first half of 2004. The Muhimana trial (one accused) started on 29 March 2004, and the Simba trial (one accused) is scheduled to commence in May 2004. Two other trials, the Seromba Case (one accused) and the Military II Case (four accused), will commence in the second half of 2004. Therefore, by the end of 2004, 26 detainees will be on trial. This will bring the total number of accused having their trials completed or in progress, to 48. Further details are given below (see sections II and III).

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[1] A first version of the completion strategy was submitted to United Nations Headquarters on 14 July 2003. That document was prepared notably within the context of General Assembly resolution 57/289, paragraph 15 (a), which provided that the proposed budget of the Tribunal for 2004-2005 should include detailed information as to how the resources requested for the biennium would support the development of a sound and realistic completion strategy. A second version of the completion strategy was submitted to United Nations Headquarters on 29 September 2003. This document formed the basis of the request to increase the number of *ad litem* judges sitting "at any one time" from four to nine. By resolution 1512 (2003), the Security Council granted the request.

[2] Following his first address to the Security Council in October 2003, the new Prosecutor, Hassan B. Jallow, reviewed all the cases that are not currently on trial, with a view to determining which cases could reasonably be completed within the time frame set by the Security Council in resolution 1503 (2003). The document dated 28 February 2004, entitled "Completion Strategy of the Office of the Prosecutor", is the result of that review.

4. Of the remaining 15 detainees, the Prosecutor intends to transfer 5 to national jurisdictions. The other 10 accused will have their cases heard when the Tribunal's capacity so allows (see paras. 14-15 and 28).

5. Seventeen indictees are at large. The Prosecutor intends to transfer four of those cases to national jurisdictions for trial. Some of them may be dead, whereas others may never be found. The actual number of these persons actually brought to trial at the Tribunal will therefore be less than 13 (see para. 29).

6. The Prosecutor has reduced the number of suspects currently under investigation from 26 to 16 and intends to complete these investigations by the end of 2004. At present, it is uncertain how many of these persons will actually be indicted. Some of them may be dead, whereas others may never be found. Indictments will be submitted for confirmation no later than October 2005 (see paras. 30-32).

7. The number of suspects that could be tried in national jurisdictions has been increased by the Prosecutor from 40 to 41. He is currently engaged in discussions with some States for this purpose. In the event that it is not possible to transfer some of these cases to national jurisdictions, the Prosecutor will return to the Security Council with alternative proposals (see section VI).

8. Security Council resolution 1503 (2003) provides that all work of the International Criminal Tribunal for Rwanda (and the International Criminal Tribunal for the Former Yugoslavia) shall be completed by 2010. It is difficult at this stage to indicate a completion strategy for the Appeals Chamber of the International Criminal Tribunal for Rwanda, as it is linked to the completion strategy of the International Criminal Tribunal for the former Yugoslavia. It is recalled, however, that all judgements of the International Criminal Tribunal for Rwanda except one have been appealed. At present, 7 judgements involving 11 accused are on appeal (Ntakirutimana, Niyitegeka, Semanza, Kajelijeli, the Media Case, Kamuhanda, and the Cyangugu Case). It is anticipated that the Appeals Chamber's already heavy workload will in all likelihood continue to increase. It should also be noted that appeals are normally lodged by both (in multi-accused cases all) parties. Therefore, the real number of appeals is much higher than the number of judgements on appeal.

II. Recent judgements and trials in progress

9. On 3 December 2003, Trial Chamber I delivered judgement in the so-called "Media Case". It involved three accused (Barayagwiza, Nahimana, and Ngeze) and was the most voluminous case heard by that Chamber during the second mandate (1999-2003). Originally, the Media trial was being conducted contemporaneously with the preparation of judgement in the Bagilishema Case, which was delivered on 7 June 2001. It was twin-tracked with the trial of Gérard and Elizaphan Ntakirutimana which began on 18 September 2001 and concluded with the judgement on 19 February 2003. The Media Case was then twin-tracked with the Niyitegeka trial, which started on 17 June 2002 and concluded with judgement on 16 May 2003.[3] Following the commencement of the third mandate in 2003, Trial

[3] "Twin-tracking" implies that two trials are heard in consecutive slots, for instance according to the following pattern: trial A five weeks, trial B five weeks, trial A five weeks, etc. Defence counsel in trial A will leave Arusha while trial B is heard. The purpose of this system is to use inevitable breaks during one trial to ensure progress of another case. Such breaks allow the Prosecution and the Defence to prepare for the next stage of the proceedings (for instance by interviewing witnesses etc.).

Chamber I has been reconstituted and sits on the continuation of the Military I Case (Bagosora, Kabiligi, Ntabakuze, and Nsengiyumva), transferred from the previous Trial Chamber III. It has also heard the Ndindabahizi trial (from September 2003), in which judgement is expected in the first half of 2004.

10. Trial Chamber II was engaged in three trials concurrently during the second mandate. Judgement in the Kajelijeli trial was rendered on 1 December 2003. The Kamuhanda trial concluded with judgement on 22 January 2004. Particularly voluminous is the Butare trial. It involves six accused, which is the largest number tried jointly before the Tribunal (Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi, and Ndayambaje). One of the judges in this Chamber was not re-elected for the third mandate (2003-2007). In resolution 1482 (2003), the Security Council did not extend his mandate for the purpose of enabling him to continue sitting on the Butare Case. On 15 July 2003, the Chamber decided that the trial should continue with a substitute judge under rule 15 *bis* of the Rules of Procedure and Evidence ("the Rules"). Appeals against this decision were dismissed by the Appeals Chamber on 24 September 2003. In the third mandate, following the delivery of judgements in the Kajelijeli and Kamuhanda trials, Trial Chamber II has given priority to the completion of the Butare trial. The Trial Chamber also commenced trial in the Government Case, involving four government ministers (Casimir Bizimungu, Justin Mugenzi, Jerome Bicamumpaka, and Prosper Mugiraneza) and has heard evidence over 72 trial days.

11. Trial Chamber III heard three trials contemporaneously during the second mandate. Judgement was given in the Semanza Case (one accused) on 16 May 2003. The Cyangugu trial with three accused (Ntagerura, Bagambiki, and Imanishimwe) concluded with judgement on 25 February 2004. On 2 April 2002, the Chamber also started the Military I trial involving four accused (Bagosora, Kabiligi, Ntabakuze, and Nsengiyumva) and heard evidence over 32 trial days. Following the reconstitution of the Chambers early in June 2003, this case has been conducted by Trial Chamber I (see para. 9 above). In the third mandate, Trial Chamber III has heard the Gacumbitsi trial (from July 2003), the Government Case (from November 2003), and the Muhimana trial (from March 2004).

12. The time needed to complete the ongoing trials is summarized in appendix II. The three single-accused cases that have started in the third mandate (Gacumbitsi, Ndindabahizi, and Muhimana) will probably lead to three judgements in 2004. In the Butare Case, 51 prosecution witnesses have testified, out of a maximum figure of 59 prosecution witnesses. For the Military I Case, it is assumed that between 80 and 100 witnesses will be called by the Prosecution. So far, 57 witnesses have testified. These two cases, involving a total of 10 accused, will be time-consuming. Also the Government Case and the Karemera et al. Case are voluminous trials. It is estimated that trials in these four multi-accused cases will be completed in 2005 and lead to judgements in that year and early 2006.

III. Remaining detainees

13. Concerning the remaining 21 detainees in Arusha whose trials have not yet started, three cases will start in 2004. The Simba Case (one accused) is scheduled to commence in May 2004, and the Seromba Case (one accused) in August 2004. Judgements in these two cases are expected in the first half of 2005. The Military II trial (four accused) will start in September 2004 (Bizimungu, Ndindiliyimana, Nzuwonemeye, and Sagahutu) and is expected to conclude in 2006. Consequently, three trials involving six accused will start from May to September 2004 and lead to judgements from 2005 to 2006. Further details are given in appendix III.

14. By the end of 2004, 15 of the present detainees in Arusha will be awaiting trial. Not all of them will be tried by the Tribunal. In determining which individuals should be subject to trial before the International Criminal Tribunal for Rwanda, the Prosecutor will be guided by the need to focus on those who are alleged to have been in positions of leadership and those who, according to the Prosecutor, bear the greatest responsibility for genocide. This concentration on the most senior leaders suspected of being most responsible for crimes committed within the jurisdiction of the International Criminal Tribunal for Rwanda is in conformity with Security Council resolution 1534 (2004). The criteria taken into consideration when making this determination are as follows:

- the alleged status and extent of participation of the individual during the genocide
- the alleged connection an individual may have with other cases
- the need to cover the major geographical areas of Rwanda in which the crimes were allegedly committed
- the availability of evidence with regard to the individual concerned
- the concrete possibility of arresting the individual concerned
- the availability of investigative material for transmission to a State for national prosecution.

15. On the basis of these criteria, the Prosecutor intends to transfer the cases of five of the present detainees in Arusha to national jurisdictions for trial.[4] It is expected that the requests for transfer will be submitted to the Trial Chambers by the end of 2004, provided that the country or countries concerned fulfil the conditions for transfer. The Chambers will commence the trials of the remaining 10 detainees from 2005 onwards. All these cases are single-accused trials.

IV. Resulting workload relating to detainees currently in Arusha

16. The analysis provided above (sections II-III) shows that, in addition to the judgements already rendered involving 21 persons, the Tribunal will deliver judgements concerning at least 37 detainees currently in Arusha (21 persons

[4] As discussions with States are ongoing it is not possible to identify these five cases in the present version of the completion strategy. For calculation purposes (see section V below), it is noted that the average number of prosecution witnesses in the remaining 15 cases is about 20.

currently at trial; 6 accused to commence from May to September 2004; 10 detainees from 2005 onwards). The trials involving two of these accused (Gacumbitsi and Ndindabahizi) are at the stage of judgement writing. Therefore there is a need to estimate the time needed to complete 18 trials involving 35 detainees.[5]

17. Predicting the required number of trial days for the completion of these trials has its difficulties. However, for the purposes of continuity and the assessment of progress, the methodology used in the previous version of the completion strategy will be maintained. Calculations and projections made in that document were premised on a 62 trial day average per accused.

18. It will be recalled, firstly, that the estimates in that document were based on the number of witnesses and hours needed to present the prosecution case, cross-examination and the defence case. Since then, numerous prosecution witnesses have testified, in particular in the Butare Case and in the Military I trial (see para. 12 above). However, for ease of reference, the table that was the basis for the estimate of 62 trial days is annexed to the present completion strategy (appendix IV).

19. It is also recalled that the length of defence cross-examination depends on factors relating to each individual case. Experience shows that in cases involving one accused, the cross-examination of prosecution witnesses will generally take about the same amount of time as the examination-in-chief. In some instances, it may even be shorter. In multi-accused trials, the time taken for cross-examination often exceeds the time taken in examination-in-chief, particularly if the witness gives evidence implicating more than one or all accused. It is assumed, as a working tool, that the total time taken for the cross-examination of a prosecution witness will normally not exceed the total time taken for the examination-in-chief of that witness, when all cases are considered as a whole. In this context, it is taken into account that the Prosecution's list of witnesses has usually been reduced during trial.

20. Finally, it is recalled that information about defence cases is difficult to obtain, particularly since most of these cases have not yet started and there is the issue of confidentiality when it comes to the trial strategy of the Defence. As a working tool, it is assumed that the time needed for the presentation of the defence case should not exceed the time required for the presentation of the prosecution case. Experience shows that it may often take less time.

21. As mentioned above, the Prosecution usually reduces the number of witnesses as the trial unfolds. Furthermore, the Chambers exert considerable control over these variables within the ambit of fair trial principles, for instance by restricting the length of examination-in-chief and cross-examination. Therefore, it is highly probable that the real time spent in court may be less than 62 trial days. Recent single-accused trials suggest that the Prosecution will usually require about 20 trial days to present its case, possibly less. It is also worth noting that such cases completed recently reflect a substantially lower number of the total number of trial days per accused (Elizaphan and Gérard Ntakirutimana: 30 trial days per accused; Niyitegeka: 35 trial days; Gacumbitsi: 32 trial days; Ndindabahizi: 27 trial days). It is expected that this trend towards shorter trials will continue. However, at present it

[5] The 18 cases involving 35 accused are Butare (6), Military I (4), the Government Case (4), Karemera *et al.* (4), Muhimana (1), Simba (1), Seromba (1), Military II (4), and 10 single-accused trials of detainees currently in Arusha.

is considered prudent to use as a working tool the estimation of 62 trial days per accused. It includes variables such as time needed for opening and closing arguments, extended cross-examination in multi-accused trials, hearing of and deliberation on motions, illness, as well as days reserved for judgement writing.

Trials in progress

22. Based on the estimation of 62 trial days per accused, the Butare trial, involving six accused, should require 372 trial days for the completion of trial. As at 26 April 2004, this trial has been conducted over 159 trial days. This means that a further 213 trial days are required for the completion of the trial.

23. The Military I trial, involving four accused, should require 248 trial days. As at 26 April 2004, this trial has been conducted over 142 trial days. This means that a further 106 trial days will be required for the completion of the trial.

24. The Government trial, involving four accused, should require 248 trial days. As at 26 April 2004, this trial has been conducted over 72 trial days. This means that a further 176 trial days will be required for the completion of the trial.

25. The Karemera et al. trial, involving four accused, should require 248 trial days. As at 26 April 2004, this trial has been conducted over 25 trial days. This means that a further 223 trial days will be required for the completion of the trial.

26. The Muhimana trial, which is a trial of a single accused, should require 62 trial days. As at 26 April 2004, this trial had been conducted over 16 trial days. This means that a further 46 trial days should be required for the completion of this trial.

27. The cumulative time required for the completion of the trials that are currently in progress is 764 trial days. Again, these are only estimates. Some trials may require longer time, others less. Additional time will be required for judgement writing.

Detainees awaiting trial

28. The Prosecutor intends to transfer 5 of the current 21 detainees to Rwanda and other national jurisdictions for trial. Trials of the remaining 16 detainees will require 992 trial days, using the average of 62 trial days per accused.

V. Workload relating to persons at large

29. According to the previous completion strategy, 17 indictees were at large. The Prosecutor intends to transfer four of these accused to national jurisdictions for trial. If arrested, these 13 indictees will increase the workload of the Tribunal. According to the Prosecutor, some of these indictees may be dead, whereas others may never be arrested.

30. The previous completion strategy indicated that 26 suspects were at large. As the Prosecutor's strategy is to prosecute before the Tribunal those persons bearing the highest responsibility for the crimes committed in Rwanda in 1994, he has reduced the number of suspects currently under investigation from 26 to 16. At present, it is uncertain how many of these persons will actually be indicted. Some of them may be dead, whereas others may never be arrested.

31. Once an individual is indicted, substantial investigations must be continued to support the trial team. Investigations may be needed to replace the evidence of witnesses who may have died, to assist in the interviewing of witnesses prior to their travel to Arusha, to supplement and corroborate the evidence, to address the defence case and any possible rebuttal.

32. All investigations will be completed by the end of 2004, as requested in resolution 1503 (2003). Moreover, when indictments are submitted for confirmation, the Prosecutor will ensure that the case will be ready for trial, in the sense that all approved identified investigations are completed, a draft pre-trial brief is prepared, together with draft exhibits and witness lists, and that disclosure searches (as of that date) are completed. This will imply that (i) there will be no delay in trial preparations when the accused is surrendered to the Tribunal; (ii) the case can be more readily assigned to a new prosecution team if necessary; or (iii) referred to a national jurisdiction pursuant to rule 11 *bis* of the Rules.

33. Additionally, while investigations of suspects at large will be concluded by the end of 2004, it cannot be anticipated that indictments will immediately be submitted for confirmation. The evidence may need to be analysed and the submission of indictments timed to coincide with tracking operations. Nevertheless, the Prosecutor anticipates that all new indictments will be submitted for confirmation by October 2005.

34. The 13 indictees still at large and the 16 suspects that the Prosecutor intends to investigate and indict mean that the Tribunal may have to hold trials for a maximum of a further 29 persons. Based on the average of 62 trial days per accused (paras. 17-21), it is estimated that their trials could take 1,798 trial days. Again, it is stressed that the number of persons brought to trial will be less than 29, and that the number of trial days per accused may be reduced.

35. In addition to investigating and bringing to indictment the 16 suspects, the investigations section continues to provide trial support in respect of the 19 accused currently on trial (increasing to 25 with the commencement of the Simba, Seromba and Military II case by the last quarter of 2004), and investigation support in respect of appeals within the same period. The anticipated increase in judicial capacity over the next four years will therefore require a corresponding shift in emphasis from classic investigations to trial and appeals support.

VI. Transfer of cases by the Prosecutor to national jurisdictions

36. The previous completion strategy indicated that about 40 cases were earmarked for transfer to national jurisdictions. The Prosecutor has now increased the number of these cases from 40 to 41. He is currently engaged in discussions with some States for this purpose. In addition to the five detainees (paras. 14-15 and 28) and the four indictees still at large (para. 29), the Prosecutor intends to transfer the cases of 32 individuals to Rwanda and other national jurisdictions for trial. The intention is to transfer, in some cases, files in respect of which investigations have been completed and are trial ready and, in other cases, dossiers requiring further investigations by the receiving country. The decision to transfer cases to national jurisdictions is a judicial one. It is for the Chamber to determine whether the conditions for transfer are met.

37. In preliminary discussions with national authorities, the Office of the Prosecutor has learned that the laws of the State in which the suspect is present may not confer jurisdiction over the suspect or the crime. Others have investigated the cases and not pursued them, and may be reluctant to re-open these cases. Many of the suspects are in less-developed countries where judicial systems are under strain to process the cases of their own accused. The Prosecutor believes that it is important to explore the idea of transferring matters to African countries where certain suspects are now living.

38. Transfer of cases to Rwanda raises several issues. One involves the death penalty, which has been imposed in genocide cases, though only rarely implemented. There is also the issue of the capacity of the Rwandan judicial system to handle such cases at a time when it faces difficulties in coping with thousands of local cases connected with the genocide. Since many of the cases earmarked for transfer are destined for Rwanda, the issue of resources may therefore affect the proposed transfer of cases to Rwanda. Transmission of the files of suspects to Rwanda and the transfer of present detainees to Rwanda under rule 11 *bis* will have to await the resolution of these issues.

39. The Prosecutor will initiate discussions with States regarding transfer of cases and transmission of files. He will insist on compliance with international standards of fair trial on the files transmitted. In the event that it is not possible to transfer or transmit these cases to national jurisdictions, he will make alternate proposals to the Security Council and highlight the related budgetary implications.

VII. Total remaining workload

40. The estimated number of trial days required for the completion of all trial work is 3,603 trial days. This is a cumulative assessment based on the calculation that 764 trial days will be required for the completion of trials in respect of the 19 detainees currently on trial (Gacumbitsi and Ndindabahizi are at the stage of judgement writing), 992 trial days will be required for the completion of trials in respect of the 16 detainees awaiting trial; and 1,798 trial days will be required for the completion of trials in respect of the 29 persons comprising the indictees who remain at large and suspects who are likely to be indicted by October 2005.

41. In 2003, the Trial Chambers sat a total of 498 trial days. In 2002, the three Trial Chambers sat a total of 414 trial days. In 2001, the Chambers sat a total of 340 trial days. Examination of the Chambers' actual sitting times shows that the amount of time that a Chamber was able to devote to trial in each of the last two years was between 135 trial days in 2001, 150 trial days in 2002 and 166 trial days in 2003.[6] In the previous version of the completion strategy, projections were premised on an average of 150 trial days per year, per Trial Chamber Section. For reasons mentioned above (para. 17), calculations and estimates in this document will be based on this average.

42. Factors contributing to lowering the number of trial days included the difficulty in obtaining the appearance of witnesses from Rwanda and judges' and counsels' illness. The Tribunal has taken several steps to ensure that such factors are

[6] The appointment of *ad litem* judges from September 2004 onwards increased the number of Trial Chamber sections. This explains the higher average.

minimized in the future. In particular, the Rules have been amended to allow for a Trial Chamber to continue the trial in the eventuality of a judge being ill or absent. In the event of a longer term of absence, the relevant provision has been amended to allow cases to continue in certain circumstances (rule 15 *bis*). The insistence by the Trial Chambers on having two defence counsel and, in the event of illness or absence of one counsel, requiring the remaining counsel to continue, will reduce the occurrence of interruptions of trials. At present, witnesses from Rwanda are appearing before the Tribunal. It is important that this situation continues. The Tribunal is anxious to ensure that the number of trial days from 2004 onwards be higher than in the last two years.

43. Experience shows that it is difficult to ensure that witnesses are always available, even with the use of additional witnesses present in Arusha in case of unavailability. A frequent situation in practice is that prosecution or defence counsel requires additional time to prepare witnesses for examination-in-chief. The Chambers also have to allow Prosecution and Defence additional time for the preparation of cross-examination in situations where unexpected evidence emerges or evidence is tendered without proper prior notice. Sufficient time is needed for pre-trial hearings, deliberation on motions, and judgement writing. These circumstances combined with illness and other forms of unavailability of witnesses do not only reduce the number of trial days but also the number of sitting hours per trial day.[7] Nevertheless, the Chambers will continue their efforts to increase the time spent in the court room.

VIII. Past and present strategies

44. **Pre-trial stage**. At the commencement of the second mandate, in June 1999, there were a considerable number of pending pre-trial motions. The Prosecutor at that time requested the joinder of a large number of accused in one case, at one point asking for the confirmation of a joint indictment for more than 20 suspects. The Confirming Judge denied the request. The Prosecutor then asked for joinder of smaller numbers of accused who allegedly participated in the same criminal transaction, such as the use of public media, the actions of military officials, government officials, or alleged crimes in certain geographical areas of Rwanda (Butare, Cyangugu). This led to a considerable number of motions from the Prosecution requesting amendments of indictments and the joinder of accused. In addition, a large number of motions were filed by the Defence.

45. Consequently, the first priority for the Chambers four years ago was to reduce the number of motions in order to move cases to the trial stage. To facilitate this, the judges amended the Rules so as to allow for motions to be considered on brief and by a single judge. These measures taken to reduce the workload of outstanding motions increased the efficiency of the Chambers and reduced costs in connection with oral hearings of motions. After the number of pending motions was reduced to a minimum, full translation and disclosure of documents was ordered for use in the pending trials before all three Trial Chambers could proceed to trial.

[7] In 2003, there was disruption to trial schedules because some of the judges were not re-elected. This required reconstitution of Chambers and reorganization of their work.

46. Additionally, changes to the Rules were adopted by the judges in the plenary to regulate the pre-trial process and to restrict the number of interlocutory appeals that were delaying the pre-trial work of the Chambers. Through pre-trial and pre-defence status conferences, a Trial Chamber has the authority to order the disclosure of information from the parties and, in particular, the parties may be ordered to file briefs addressing the factual and legal issues, identifying contested matters, and provide a list of witnesses intended to be called, with a summary of the facts and the specific allegations in the indictment on which the witnesses will testify. Moreover, the parties must give an estimate of the time that will be taken by each witness to give evidence, and the Trial Chamber may order a reduction in the number of witnesses and the time for witnesses to give evidence-in-chief. The Trial Chamber may also demand information on the status of exhibits (rules 73 *bis* and *ter*).

47. A useful step was the establishment of the Trial Committee in 2003, which is composed of representatives of Chambers, the Registry, and the Prosecution. The Committee has facilitated the trial-readiness of several new cases. A translation working group has studied ways to speed up translation of documents and thus avoid delays in the judicial proceedings.

48. Guilty pleas reduce the length of trials. Experience shows that not more than a day is needed for a Chamber to satisfy itself that a guilty plea is informed, unequivocal, and made freely and voluntarily. The writing of the judgement requires a few weeks. Unlike the situation at the International Criminal Tribunal for the Former Yugoslavia, very few accused have pleaded guilty at the International Criminal Tribunal for Rwanda.[8] It is difficult at this stage to estimate how many accused at the International Criminal Tribunal for Rwanda may in future agree to such a procedure. At the plenary session in May 2003, the Rules were amended, providing a legal basis for plea-bargaining. So far, it has not been used.

49. **The trial stage.** All Trial Chambers have been conducting trials on a twin-track basis (in some instances also on a "triple-track" basis). This strategy resulted in the production of a considerable number of judgements in 2003. However, twin-tracking of two big cases (or even three) is cumbersome. Experience shows that the best model is to twin-track one big and one small case, and this strategy will be followed in the future, unless the big case is particularly voluminous and complex. When required, the Tribunal is using the so-called "shift system", which implies that one court room is used for two cases heard in morning and afternoon sessions, respectively. The shift system operates in a morning shift from, for instance, 0830 to about 1300, and an afternoon shift until about 1900.

[8] The following judgements were based on guilty pleas: *Prosecutor v. Jean Kambanda* (1998); *Prosecutor v. Omar Serushago* (1999); *Prosecutor v. Georges Ruggiu* (2000).

50. Following the Tribunal's request of 9 July 2001, the Security Council adopted resolution 1431 (2002) of 8 August 2002, which made possible the creation of a pool of 18 *ad litem* judges. The purpose of this reform, which followed a similar Security Council resolution for the International Criminal Tribunal for the Former Yugoslavia in 2000, was to increase the Tribunal's judicial capacity. The 18 *ad litem* judges were elected by the General Assembly on 25 June 2003. The first *ad litem* judge took office on 1 September 2003 and three others arrived in October 2003. Pursuant to two other requests, on 8 and 29 September 2003, respectively, the Security Council on 27 October 2003 adopted resolution 1512 (2003), by which it increased from four to nine the number of *ad litem* judges who could take office at any one time. The Security Council also conferred on the *ad litem* judges the competence to adjudicate over pre-trial matters. The fifth *ad litem* judge arrived in March 2004. Others will arrive in connection with the commencement of new trials in the second half of 2004. The arrival of *ad litem* judges made it possible to start four new trials and to continue the Butare trial.[9]

51. With nine *ad litem* judges, the Tribunal would be able to set up six Trial Chamber sections. These six sections will be able to produce 4,500 hours of trial work over 900 trial days per year. However, it follows from the statute of the Tribunal that a Trial Chamber section must comprise both permanent and *ad litem* judges. Hence, the full utilization of *ad litem* judges depends on the availability of permanent judges. At present, several permanent judges are engaged in voluminous trials.[10] This reduces the possibility of increasing, on a permanent basis, the number of Trial Chambers sections to six. However, experience shows the usefulness of twin-tracking one joint trial with a single-accused trial, and of the Trial Chamber sections sitting in shifts. Therefore, the number of Trial Chamber sections will be about six, even if they are not all sitting on a permanent basis.

52. From September 2004, seven trials will be in progress, of which five are voluminous joint trials.[11] With only three courtrooms available, the Tribunal has to continue to sit in morning and afternoon shifts. Such sessions are shorter than full trial days. The construction of a fourth courtroom would allow for more full trial days and increase the courtroom capacity when appeals are heard.

53. In spite of all measures taken to accelerate the proceedings, cases will still be time-consuming. It should be remembered that conducting judicial proceedings at the international level is a more complicated task than at the national level. The cases at the ad hoc Tribunals are legally and factually very complex. There is a considerable volume of documents required in trying the alleged architects of the atrocities, including high-ranking members of the Government. The documents are all subject to disclosure and must be translated for legal teams and accused, who may require translations of all the documents into an official language of the Tribunal before they respond to motions or undertake trial preparation. The number of witnesses is often considerable in joinder cases, and simultaneous interpretation

[9] From September 2003 to the end of April 2004, *ad litem* judges participated in the following four new trials: Ndindabahizi, the Government Case, Karemera *et al.*, and Muhimana.

[10] Two permanent judges sit in the Butare Case, three in the Military I trial, and two in the Karemera *et al.* Case. In the Government Case, the Chamber is composed of one permanent and two *ad litem* judges.

[11] The following Trial Chamber sections are envisaged in the second half of 2004: Butare, Military I, the Government Case, Karemera *et al.*, Military II, Simba, and Seromba. This is possible because some judges sit in two trials, either because of twin-tracking or the shift system.

of all testimony is required into three languages. Witnesses have often to be extracted from a difficult environment, afforded considerable protection before and after testimony and sometimes relocated. The staff and counsel involved in cases come from different cultures and traditions and effective communication requires new skills and extra effort. Prosecution and defence counsel come from all over the world, and have different courtroom styles. Defence counsel have to leave their other casework for considerable periods to spend time working at the Tribunal in Arusha, usually away from their practices.

54. **Administrative matters.** With the shift in emphasis of the Tribunal from one centred on investigation and arrests to one centred on trials, the Registry will focus its attention on the end date for the Tribunal in all its workplaces. No contract will be entered into, no item of equipment purchased, no personnel recruited without a consideration of how the closing of the Tribunal will affect the issue and how it will, in turn, affect the completion strategy.

55. In assessing its needs for human resources with a view to promoting the implementation of its completion strategy, the Prosecution envisages a substantial increase in the number of trial attorneys and an expansion of its Appeals Section. Investigative and administrative support is also needed. This increase will be addressed by redeployment. The Prosecution expects that at the anticipated conclusion of investigations at the end of 2004, some posts currently held by investigators could be redeployed to increase the number of trial attorneys, legal advisers and other staff required for trial.

IX. Conclusions

56. On the basis of the estimated workload outlined above, it is possible to draw the following conclusions.

57. As indicated above (paras. 3 and 40), there are currently 19 detainees involved in five trials (Butare, Military I, the Government Case, Karemera et al., and Muhimana), four of which are lengthy because they are joint trials. These trials are at different stages. An estimate of 764 trial days will be required for their completion. Trials of the 16 detainees awaiting trial will require about 992 trial days. Approximately 1,798 trial days will be required for the completion of trials in respect of the 29 persons comprising the indictees who remain at large and suspects who are likely to be indicted.

58. In 2004, three trials (Gacumbitsi, Ndindabahizi, and Muhimana) will be completed. Three trials involving six accused (Simba, Seromba, and Military II) are expected to commence from May to September 2004. This will bring the number of accused having their cases completed or in progress to 48.

59. In 2005, trials in the Military I and Butare Cases are expected to be completed. The situation is the same for the Karemera et al. Case and possibly the Government Case. About three single-accused trials, involving detainees currently awaiting the commencement of their respective trials, are expected to commence. Judgements are also expected to be rendered in the Simba and Seromba Cases.

60. With the completion of most multi-accused trials, more permanent judges will become available to sit with *ad litem* judges. It is therefore expected that about six

single-accused trials could commence in 2006. The Military II trial is expected to be completed that year.

61. In 2007, about six single-accused trials could commence, including indictees at large or suspects. Depending on the progress of these cases, about six single-accused trials could start in 2008.

62. The projections set out above imply that, by 2008, the Tribunal could be able to complete trials and judgements relating to 65 to 70 persons, depending on the progress of present and future trials. Again, it is emphasized that this is an estimate. The Tribunal is committed to bringing to justice those persons who were the most responsible for genocide and violations of international humanitarian law that were committed in Rwanda in 1994. In this process, the Tribunal will establish the guilt or innocence of the accused, bring justice to victims of the massive crimes that were committed, and establish a record of facts that can aid reconciliation in Rwanda. The Tribunal will also leave a legacy of international jurisprudence that can guide future courts and deter the future commission of these grave crimes.

63. The present document is part of the Tribunal's continuing process of refining its completion strategy. The Tribunal welcomes contributions to this process.

Appendix I

PERSONS CONVICTED OR ACQUITTED: TWENTY-ONE ACCUSED IN FIFTEEN JUDGEMENTS

First Mandate (May 1995-May 1999)

Name	Former Title	Initial Appearance	TC	Judgement
J.-P. Akayesu	Bourgmestre of Taba	30 May 1996	TC1	2 September 1998
J. Kambanda	Prime Minister	1 May 1998	TC1	4 September 1998 (guilty plea)
O. Serushago	Businessman, Interahamwe leader	14 December 1998	TC1	5 February 1999 (guilty plea)
C. Kayishema	Prefect of Kibuye	31 May 1996	TC2	21 May 1999 (joinder)
O. Ruzindana	Businessman	29 October 1996		
G. Rutaganda	Businessman, 2nd Vice-president of Interahamwe	30 May 1996	TC1	6 December 1999
A. Musema	Businessman	18 November 1997	TC1	27 January 2000
Sum first mandate			**Six judgements (seven accused)**	

Second Mandate (May 1999-May 2003)

G. Ruggiu	RTLM Journalist	24 October 1997	TC1	1 June 2000 (guilty plea)
I. Bagilishema	Bourgmestre of Mabanza	1 April 1999	TC1	7 June 2001
G. Ntakirutimana	Doctor	2 December 1996	TC1	21 February 2003 (joinder)
E. Ntakirutimana	Pastor	31 March 2000		
L. Semanza	Bourgmestre of Bicumbi	16 February 1998	TC3	15 May 2003
E. Niyitegeka	Minister of Information	15 April 1999	TC1	15 May 2003
J. Kajelijeli	Bourgmestre of Rukingo	19 April 1999	TC2	1 December 2003
F. Nahimana	RTLM Director	19 February 1997	TC1	"Media Case" (joinder) 3 December 2003
H. Ngeze	Kangura Editor	19 November 1997		
J.-B. Barayagwiza	Director, Ministry of Foreign Affairs	23 February 1998		
J. Kamuhanda	Minister of Culture and Education	24 March 2000	TC2	22 January 2004
A. Ntagerura	Minister of Transport	20 February 1997	TC3	"Cyangugu Case" (joinder) 25 February 2004
E. Bagambiki	Prefect of Cyangugu	19 April 1999		
S. Imanishimwe	Lieutenant in FAR	27 November 1997		
Sum second mandate			**Nine judgements (14 accused)**	

Positions: The 21 accused held the following positions in 1994: 1 Prime Minister, 3 Ministers, 2 Prefects, 4 Bourgmestres, 1 Senior Admin., 3 Media, 1 Military, 1 Clergy, 5 Other.

Appendix II

TRIALS IN PROGRESS: TWENTY-ONE DETAINEES IN SEVEN CASES

Name	Former Title	Initial Appearance	TC	Comments
P. Nyiramasuhuko	Minister of Family and Women's Affairs	3 September 1997	TC2	"Butare Case" (joinder). Started in second mandate. Judgement expected in 2005.
A. S. Ntahobali	Interahamwe leader	17 October 1997		
S. Nsabimana	Prefect of Butare	24 October 1997		
A. Nteziryayo	Prefect of Butare	17 August 1998		
J. Kanyabashi	Bourgmestre of Ngoma	29 November 1996		
E. Ndayambaje	Bourgmestre of Muganza	29 November 1996		
T. Bagosora	Dir. Of Cabinet, Ministry of Defence	20 February 1997	TC1	"Military I Case" (joinder). Started in second mandate. Judgement expected in 2005.
G. Kabiligi	Brigadier-General in FAR	17 February 1998		
A. Ntabakuze	FAR Battalion Commander	24 October 1997		
A. Nsengiyumva	Lieutenant-Colonel in FAR	19 February 1997		
S. Gacumbitsi	Bourgmestre of Rurumo	20 June 2001	TC3	Started 28 July 2003. Judgement expected in first half 2004.
E. Ndindabahizi	Minister of Finance	19 October 2001	TC1	Started 1 September 2003. Judgement expected in first half 2004.
C. Bizimungu	Minister of Health	3 September1999	TC2	"Government Case" (joinder) Started 5 November 2003. Judgement expected in 2005.
J. Mugenzi	Minister of Commerce	17 August 1999		
J. Bicamumpaka	Minister of Foreign Affairs	17 August 1999		
P. Mugiraneza	Minister of Civil Service	17 August 1999		
E. Karemera	Minister of Interior, V-P of MRND	7 April 1999	TC3	"Karemera *et al.* Case" (joinder) Started 27 November 2003. Judgement expected in 2005.
M. Ngirumpatse	D-G of Ministry of Foreign Affairs, President of MRND	7 April 1999		
J. Nzirorera	President of National Assembly, S-G of MRND	7 April 1999		
A. Rwamakuba	Minister of Education	7 April 1999		
M. Muhimana	Councillor	24 Nov. 1999	TC 3	Trials started on 29 March 2004. Judgement expected in 2004.

Positions: 8 Ministers, 1 Parliamentarian, 2 Prefects, 2 Senior admin., 3 Bourgmestres, 1 Councillor, 3 Military, 1 Others.

Appendix III

DETAINEES AWAITING TRIAL

Name	Former Title	Initial Appearance	TC	Number of OTP witnesses. Comments.
A. Simba	Lieutenant-Colonel in FAR	18 March 2002	TC1	Starts in May 2004. About twenty witnesses. Judgement expected early 2005.
A. Seromba	Priest, Kivumu Commune	8 February 2002	TC1	Starts in August 2004. About eighteen witnesses. Judgement expected first half of 2005.
A. Ndindilyimana	Chief of Staff of Gendarmerie	27 April 2000	TC2	"Military II Case" (joinder) Starts in September 2004. Less than ninety witnesses. Judgement expected in 2006.
F-X Nzuwonemeye	FAR Battalion Commander	25 May 2000		
I. Sagahutu	2IC of Reconn. Battalion	28 November 2000		
A. Bizimungu	Chief of Staff of FAR	21 August 2002		
J. Mpambara	Bourgmestre of Rukara	8 August 2001	TC1	30 OTP witnesses
T. Muvunyi	Commander, Ecole Sous-officiers	8 November 2000	TC3	25 OTP witnesses
S. Nchamihigo	Deputy Prosecutor	29 June 2001	TC1	15 OTP witnesses
E. Rukundo	Chaplain	26 September 2001	TC3	20 OTP witnesses
P. Zigiranyirazo	Businessman	10 October 2001	TC3	30 OTP witnesses
F. Karera	Prefect of Kigali Rural	26 October 2001	TC3	15 OTP witnesses
P. Bisengimana	Bourgmestre of Gikoro	18 March 2002	TC2	15 OTP witnesses
V. Rutaganira	Councillor of Mubuga	26 March 2002	TC1	15 OTP witnesses
J. Nzabirinda	Youth Organizer	27 March 2002	TC2	15 OTP witnesses
S. Bikindi	Musician	4 April 2002	TC3	30 OTP witnesses
H. Nsengimana	Rector, Christ-Roi College	16 April 2002	TC2	15 OTP witnesses
J.-B. Gatete	Bourgmestre of Murambi	20 September 2002	TC1	30 OTP witnesses
T. Renzaho	Prefect of Kigali	21 November 2002	TC2	30 OTP witnesses
I. Hategekimana	Lieutenant, Commander of Ngoma Camp, Butare	28 February 2003	TC3	25 OTP witnesses
J. Rugambarara	Bourgmestre of Bicumbi	15 August 2003		20 OTP witnesses

Appendix IV

ESTIMATES BASED ON THE PROSECUTOR'S (OTP) FIGURES FOR PRESENT DETAINEES (PREVIOUS COMPLETION STRATEGY)

	Case	No. of Accused	No. of OTP witnesses	No. of hours for OTP case-in-chief	No. of hours for Defence cross-examination	No. of hours for Defence case-in-chief	No. of hours for OTP cross-examination	Total hours
1	Butare	6	68	330	330	330	330	1320
2	Military I	4	100	500	500	500	500	2000
3	Muvunyi and Hategikimana	2	43	180	180	180	180	720
4	Seromba	1	20	100	100	100	100	400
5	Ndindabhizi	1	15	50	50	50	50	200
6	Military II	4	90	500	500	500	500	2000
7	Government I	4	50	300	300	300	300	1200
8	Karemera *et al.*	4	45	300	300	300	300	1200
9	Zigiranyirazo	1	30	100	100	100	100	400
10	Bikindi	1	30	100	100	100	100	400
11	Renzaho	1	30	100	100	100	100	400
12	Gikongoro	1	41	170	170	170	170	680
13	Bisengimana	1	15	50	50	50	50	200
14	Karera	1	15	50	50	50	50	200
15	Mpambara	1	30	150	150	150	150	600
16	Gacumbitsi	1	30	120	120	120	120	480
17	Rukundo	1	20	80	80	80	80	320
18	Nzabirinda	1	15	60	60	60	60	240
19	Nsengimana	1	15	60	60	60	60	240
20	Muhimana	1	15	60	60	60	60	240
21	Rutaganira	1	15	60	60	60	60	240
22	Gatete	1	30	120	120	120	120	480
23	Nchamihigo	1	15	60	60	60	60	240
24	Rugambarara	1	20	80	80	80	800	340
		42	**794**	**3680**	**3680**	**3680**	**3680**	**14740**